

JOSEPHINE M. MELCHIOR

OCTOBER 29 (legislative day, OCTOBER 25), 1943.—Ordered to be printed

Mr. ROBERTSON, from the Committee on Claims, submitted the following

REPORT

[To accompany S. 255]

The Committee on Claims, to whom was referred the bill (S. 255) for the relief of Josephine M. Melchior, having considered the same, report favorably thereon with the recommendation that the bill do pass with the following amendment:

On page 1, line 6, strike out the figures "\$1,860" and insert "\$807.92".

The purpose of the proposed legislation is to authorize the Secretary of the Treasury to pay to Josephine M. Melchior, of Mount Angel, Oreg., the sum of \$807.92, for compensation for the loss of certain timber owned by her in Tillamook County, Oreg., such timber having been cut without her consent by a survey party of the United States Coast and Geodetic Survey.

STATEMENT OF FACTS

From the report of the Secretary of Commerce, dated April 6, 1943, and the correspondence thereto attached, it appears that in establishing a triangulation station in Tillamook County, Oreg., it was necessary for the survey party of the United States Coast and Geodetic Survey to remove or cut certain timber. It further appears that the foreman in charge made certain inquiries but was unable to locate the owner of the property. It was later identified as being owned by Mrs. Josephine M. Melchior. The foreman states local residents informed him that the timber was of no value and acting on this information, he proceeded to cut trees to clear the necessary lines of sight. It is also stated that a Mr. Harold Williams, who was on the survey party, concurred in the opinion of the foreman that this timber was of no value. Some 2 years later, Lt. A. Newton Stewart, who was in charge of the surveys in locality, and Forest Officer M. A. Williams, viewed the cuttings and submitted a report of some 188,390 board feet of hemlock; 10,700 board feet of spruce, of a total measured value of \$204.20. The Department of Commerce

has accepted this figure as being reasonable in full satisfaction of the claim.

Several paragraphs in the correspondence, submitted to your committee by the Department of Commerce, should be noted. On August 5, 1942, J. H. Hawley, Acting Director of the United States Coast and Geodetic Survey, Washington, wrote to Lt. A. Newton Stewart, Fairbanks, Alaska, in part as follows:

Your attention is called, however, to the fact that this is the second claim due to indiscriminate cutting of timber while you were on the assignment along the Oregon coast. Neither action was handled in accordance with the regulations, which specify that before cutting timber the approval of the owner of the property must be obtained. Apparently your building foreman undertook the cutting of timber on this project without making an extensive effort to contact the owner in individual cases.

The Reverend Hildebrand Melchior, son of Mrs. Josephine M. Melchior, carried on most of the correspondence with the Department of Commerce and with Lt. A. Newton Stewart, chief of party. On June 24, 1942, Lieutenant Stewart wrote to Reverend Melchior and the second paragraph of that letter is as follows:

The information given me was very incomplete, but it appears likely it was at one of our stations, Meares. In the heavy timber in that locality, the man doing reconnaissance for our survey failed to reach the point he thought he was on. The error was discovered by us and the station moved. This may account for the lack of permission, though we thought all the time we were on the same property.

The above would seem to contradict somewhat the supposed statement of the foreman and inhabitants.

The claim of Mrs. Melchior was based on damage for the cutting of 465,000 feet of lumber at \$1 per thousand feet, plus \$3 per thousand for damages. The \$3 per thousand is based on the statement that this is the damage the Government claims when others cut timber on Government property, and that this case is reversed. Lieutenant Stewart replied to this statement of Reverend Melchior in his letter of September 11, 1942, as follows:

With respect to your claim for \$3 per thousand for timber cut in addition to actual damages, surely you know the Government has the power to penalize an individual and that it does not work the other way around.

It was later disclosed that the foreman in charge of the cutting was Walter J. Bilby, and on February 14, 1943, he wrote Lieutenant Stewart in part as follows:

* * * It would be impossible for me to make an estimate of timber footage that was cut on this station for line clearing but as I recall there would be about 60 man-hours of (inexperienced timber fallers) work done there.

Quoted below is an excerpt from Lieutenant Stewart's letter of March 12, 1943, to the Director of the United States Coast and Geodetic Survey, at Washington:

The trees lay as they had fallen, each near the stump. They ranged from 6 inches to 3 feet 6 inches in diameter and were taller than usual. The unusual length was taken into consideration in the scaling.

After carefully considering the facts and circumstances in this case, it would appear that the Government's estimate of a total of 181,515 feet destroyed at a value of \$204.20 is probably on the low side. On the other hand the Melchior figure of 465,000 feet is probably on the high side. It is felt that probably a mean between these two figures would approximate a just solution. Therefore your committee suggests \$1 per thousand for 323,171 feet destroyed or \$323.17.

There is little doubt but that Mrs. Melchoir suffered some damage to her property as a result of the construction of this triangulation station and the cutting of her timber. In the reverse position the Government would apparently have assessed her \$3 per thousand. Your committee feels that an equitable solution of this damage would be the payment of \$1.50 per thousand feet, or \$484.75, making \$807.92 the total award. It has therefore amended the bill accordingly, and recommend that it do pass.

Attached is the report of the Department of Commerce, together with other pertinent evidence.

ST. MARY'S PARISH,
Mount Angel, Oreg., May 22, 1942.

COAST AND GEODETIC SURVEY,
Portland, Oreg.

GENTLEMEN: My mother, Josephine M. Melchior, has 200 acres of timberland located in section 21, township 1 S, range 10 W. meridian, and section 28, township 1 S, range 10 W. W. meridian.

We have just had this timber cruised by Mr. George H. Williams of Bay City, Oreg. In his report we were astonished to find that the Government, in executing a geodetic survey in that district, found it necessary to cut down nearly a half million feet of fine standing timber. There was no request made of any kind, neither was there any permission given for this operation. For this reason I am writing to you to ascertain who is responsible for the damages done to this property.

Would you be kind enough to investigate and let me know with whom I might communicate in order to collect damages?

Yours sincerely,

REV. HILDEBRAND MELCHIOR, O. S. B.

DEPARTMENT OF COMMERCE,
UNITED STATES COAST AND GEODETIC SURVEY,
Fairbanks, Alaska, June 24, 1942

REV. HILDEBRAND MELCHIOR,
St. Marys Parish, Mount Angel, Oreg.

I have received your letter in reply to inquiries concerning damage to your mother's property in cutting timber in connection with survey work.

The information given me was very incomplete, but it appears likely it was at one of our stations, Meares. In the heavy timber in that locality, the man doing reconnaissance for our survey failed to reach the point he thought he was on. The error was discovered by us and the station moved. This may account for the lack of permission, though we thought all the time we were on the same property.

At the time inquiries were made of local inhabitants concerning the owner and of the value of the timber. The owner was not discovered and the timber considering its quality and location was considered to have no value.

Since you gave me no estimation of the damage, it is requested again you send this information to me as quickly as possible. Please give amount of damage and how estimated, that is, on what basis. This should be as of the time the damage was done and giving consideration to its location.

This information should be given me prior to taking it up with Washington. At best this is a very slow process since the damage must be agreed upon, and action taken by Congress before settlement can be made.

Yours truly

A NEWTON STEWART,
Chief of Party.

ST. MARY'S PARISH,
Mount Angel, Oreg., July 1, 1942.

Mr. A. NEWTON STEWART,
Chief of Party, United States Coast and Geodetic Survey,
Fairbanks, Alaska.

DEAR MR. STEWART: In response to your letter of June 24, I would say that we deliberately made no claim because we wanted to be sure that we were dealing with the right party. Now that you acknowledge that it was your crew who cut this timber we feel that we are in a position to place our case.

I am told by reliable loggers that the penalty for cutting timber on Government property without proper authority is stumpage plus \$3 per thousand for damages. I understand that the Government has no mercy on the individual when such a violation occurs. It does not take into consideration the difficulty of terrain, the inexperience of surveyors and poor equipment—over the line and you pay the penalty. Now let us reverse the situation. The Government is the offender; the ground conditions are not favorable; the equipment and men are the best—and still an error is made.

You must realize that we are in no position to hire counsel to oppose the Government of the United States. But we do feel that whereas the Government has made a mistake the Government will, like any honest and respectable citizen, assume the entire responsibility and, without delay and expense to the offended party, make due restitution.

We have deliberately refrained from taking this up with the Government directly until we have completed our correspondence with those who are in charge of the work. We were not holding the individual up for censure because after all the work done by the Government is in the final analysis the work of some individual and he, like others, is subject to mistakes. Though of course we are chagrined at the thought that perhaps a half-million feet of timber (and according to the cruiser, this was good timber) should have been cut down and deliberately left to rot.

We have always held this timber at \$1 per thousand for stumpage. According to our survey, there was 465,000 feet of timber cut down. Our claim to the Government therefore is \$1,860. If the timber that has been cut were actually scaled we might arrive at a figure lesser or greater than the above. The stumpage that we arrived at was obtained, as I stated in my letter of June 6, from Mr. George H. Williams, of Bay City, Oreg.

If there is any other information that you may require we will be glad to furnish it.

Yours sincerely,

Rev. HILDEBRAND MELCHOIR, O. S. B.

DEPARTMENT OF COMMERCE,
UNITED STATES COAST AND GEODETIC SURVEY,
Washington, August 5, 1942.

To: Lt. A. Newton Stewart, United States Coast and Geodetic Survey, Fairbanks, Alaska.

From: The Director, United States Coast and Geodetic Survey.

Subject: Claim for damages.

Reference is made to your letter of July 24, 1942, in which you discuss the anticipated claim for damages sustained in cutting timber at station Meares, near Tillamook, Oreg. If a claim such as you discuss is submitted to the Government, it will be necessary for you to make a full report on this matter, accompanied by statements from the personnel involved. It will also probably be necessary for you to make a personal investigation of this matter upon your return to the United States.

If the Reverend Hildebrand Melchior desires to submit a claim to the Government, it will be necessary for him to substantiate his request for damages by affidavits from at least three disinterested parties, who have to certify that they have viewed the damage and who will state the amount of damage incurred.

It will probably also be necessary to obtain a statement from the United States Forest Service at Portland to the effect that personnel from their organization have visited this site and indicating the amount of damage sustained.

No additional action will be taken by this office until receipt of a formal claim from Reverend Melchior.

Your attention is called, however, to the fact that this is the second claim due to indiscriminate cutting of timber while you were on the assignment along the Oregon coast. Neither action was handled in accordance with the regulations, which specify that before cutting timber the approval of the owner of the property must be obtained. Apparently your building foreman undertook the cutting of timber on this project without making an extensive effort to contact the owner in individual cases.

J. H. HAWLEY, *Acting Director.*

Fairbanks, Alaska,
Box 848.

DEPARTMENT OF COMMERCE,
UNITED STATES COAST AND GEODETIC SURVEY,
Tanana, Alaska, September 11, 1942.

REV. HILDEBRAND MELCHIOR,
Mount Angel, Oreg.

DEAR REVEREND: Your letters of July 1 and August 20 have been received. These are in reference to damage at your mother's property in Tillamook County.

It is necessary to differ with you in certain respects. You made the statement I admitted that a party under charge of myself cut the timber. This is not true. I have no way of knowing at this time whether the place we cut some timber is the place you speak of. This statement was made previously.

With respect to your claim for \$3 per thousand for timber cut in addition to actual damages, surely you know the Government has the power to penalize an individual and that it does not work the other way around.

If the Government damaged your property you should be entitled to actual damages. Since my previous letter to you some additional checking up has been done concerning the station I mentioned before. My information is from a source which should be reliable, having close knowledge of the lumbering industry, timber, and its value, and also of the cutting done by this party. This information leads to the belief that the actual damage done was very negligible; that the first cost of filing a claim for damage at this station would exceed the actual damage done by this party. As stated previously, there were other survey parties working in the area and using some of our stations. Even if we both refer to the same point in correspondence, your report of damage done exceeds so much that of which I have information, it seems quite possible other parties may have used the station.

I have done some corresponding outside concerning your claim. Although you made the statement you were filing claim for the damage, apparently this has not been done.

Yours truly,

A. NEWTON STEWART,
Chief of Party.

FEBRUARY 14, 1943.

To: Lt. A. Newton Stewart, chief of party, United States Coast and Geodetic Survey, Seattle, Wash.

From: Walter J. Bilby, assistant signalman, United States Coast and Geodetic Survey, Seattle, Wash.

Subject: Timber cut at triangulation station Meares, February 1941.

In regards to timber cut at station Meares, I make the following statement from memory only as I have no written records at hand.

As I remember this station, it is on a round top timbered hill about 3 or 4 miles west of Tillamook, Oreg. The east side of the hill had been logged off of all the good timber and the logging company had stopped about 1 mile from the top of the hill, as the top was covered with overmatured tamarack. There also was a strip about 200 yards wide and 400 yards long over the top of the hill and about 100 yards east of the station that was blown down by winds, making it very difficult to walk through. There was also down timber all over the hill.

It would be impossible for me to make an estimate of timber footage that was cut on this station for line clearing but as I recall there would be about 60 man-hours of (inexperienced timber fallers) work done there.

Most of the timber was rotten, some only shells, and with the exception of maybe one or two trees was all tamarack and would be of no value even for fire-

wood, if it was possible to get it out through this terrible jungle of down timber caused by the tornado which had passed over the hill probably some time in 1940.

I am sure there must be some mistake in estimating the amount of timber cut, for as I recall the amount of work done there it would not even approach the figure of 465,000 feet on a stumpage basis and whoever made the estimate had been confused with the cutting and the windfall it would far exceed this amount. However, one standing down on the road and seeing the gap cut through the timber by the wind could come to this estimated amount.

Respectfully,

WALTER J. BILBY.

DEPARTMENT OF COMMERCE,
UNITED STATES COAST AND GEODETIC SURVEY,
Seattle, Wash., March 12, 1943.

To: The Director, United States Coast and Geodetic Survey, Washington, D. C.
From: Lt. A. Newton Stewart, United States Coast and Geodetic Survey.
Reference: 62/dws, letter of February 2, 1943.
Subject: Claim for damages at station Meares, Oreg.

Following receipt of the above letter referred to, statements concerning the cutting of timber at station Meares were requested from Harold Williams and Walter Bilby, both of whom were present at all times when timber was cut. The United States Forest Service at Portland, Oreg., was contacted by mail and arrangements were made to meet Mr. M. A. Williams at Tillamook.

On March 2, Mr. Williams and I, proceeded to the station to examine the cutting. A sketch of the triangulation executed in 1941 was oriented at the station, and each line observed was followed through the timber to the limit of the cutting. Each individual tree cut was scaled. It appeared there was no cutting except what would be necessary to open up the lines observed. The ground in the vicinity of the station was well covered inasmuch as the quantity of timber claimed by Reverend Melchoir to have been fallen was not found. There was no evidence of any fallen timber having been taken away as there was no disturbance of the ground in the locality. The trees lay as they had fallen, each near the stump. They ranged from 6 inches to 3 feet, 6 inches in diameter and were taller than usual. The unusual length was taken into consideration in the scaling.

The result of the scaling, together with the estimated total value is enclosed in the form of a letter signed by O. F. Ericson, acting regional forester, Portland. The value stated appears to be very liberal. When at the station Mr. Williams questioned any real value, stating the cost of getting timber out would make it uneconomical and that there was no local market for the hemlock. He stated further that there was no question of their being any damage to the property for any reason including fallen trees left on the ground, because of the vast amount of large windfallen trees covering the same ground.

All correspondence in my files concerning this case is enclosed. It is believed to be entirely complete. In this correspondence Williams is the name of three individuals. They are a Coast and Geodetic Survey employee, the timber cruiser in Reverend Melchoir's letter of June 6, 1942, and the Forest Service guard who visited the station with me. There is no evidence that any of the three are related.

It is pointed out there is no evidence at hand to show definitely that station Meares is on the land owned by Mrs. Melchoir though it appears to be the case, judging from Reverend Melchoir's letter of June 6. An attempt was made to determine this, but without results.

Respectfully,

A. NEWTON STEWART.

DEPARTMENT OF COMMERCE,
Washington, April 6, 1943.

HON. ALLEN J. ELLENDER,
*Chairman, Committee on Claims,
United States Senate, Washington, D. C.*

MY DEAR MR. CHAIRMAN: In your communication of January 21, 1943, you referred to the Department S. 255, a bill for the relief of Josephine M. Melchior,

and requested an expression of an opinion respecting the merits of the proposed legislation.

This bill authorizes and directs the Secretary of the Treasury to pay to Josephine M. Melchior of Mount Angel, Oreg., \$1,860 in full satisfaction of her claim against the United States for compensation for the loss of certain timber owned by her in Tillamook County, Oreg., such timber having been cut without her consent by a survey party of the United States Coast and Geodetic Survey.

An investigation has been conducted by the Coast and Geodetic Survey in order to ascertain the extent of damages suffered by Mrs. Melchior. It appears that the foreman in charge of the crew which established the triangulation station on the property referred to in early 1941 made inquiries but was unable to locate the owner of the property. Local residents informed him that this timber was of no value and acting on this information, he proceeded to cut trees to clear the necessary lines of sight. The opinion of the foreman, that this timber was of no value, was concurred in by Mr. Harold Williams who was on the survey crew.

Lt. A. Newton Stewart, who was in charge of the surveys in this locality, in investigating this claim recently obtained the assistance of Mr. M. A. Williams of the United States Forest Service, north Pacific region, Portland, Oreg. These two officers have personally viewed the cuttings and have submitted separate reports. In a letter under date of March 10, 1943, to Lieutenant Stewart from the regional forester, United States Forest Service, Portland, Oreg., there is the following statement:

"Supervisor First informs me that you and Guard Williams made an examination of the felled timber at station Meares, and that the net log scale of the timber involved is as follows:

	<i>Board feet</i>
Hemlock (gross)-----	188,390
Defect (9 percent)-----	16,955
Net-----	171,435

Sitka spruce (gross)-----	10,700
Defect-----	620
Net-----	10,080

"A fair valuation of the hemlock is 75 cents to \$1 per thousand and of the Sitka spruce, \$3.25 per thousand. Since this apparently is a settlement by the Coast and Geodetic Survey, it is recommended that the hemlock be paid for at \$1 per thousand and spruce at \$3.25 per thousand. The total value at these rates is—	
Hemlock, 171,435 M, at \$1-----	\$171.44
Spruce, 10,080 M, at \$3.25-----	32.76
Total-----	204.20"

In view of the above facts, the Department is not opposed to the enactment of S. 255 if limited to the amount of \$204.20 in full settlement of the claim.

Copies of all reports relating to this claim are enclosed.

The Bureau of the Budget has advised that there will be no objection to the submission of this letter to the committee.

Sincerely yours,

WAYNE C. TAYLOR,
Acting Secretary of Commerce.

